

OMBUDSMAN POLICY

Introduction

The Department of Environmental Management is committed to continuously improving its performance. The Department's goals include effectiveness in protecting environmental quality and public health, as well as efficiency and accountability in the way the Department develops and implements rules and regulations, policies and programs. The Department recognizes that continuous improvement requires willingness to evaluate strengths and weaknesses on a regular basis, and willingness to learn from mistakes. The Department further recognizes that the quality of its performance depends significantly on public confidence and support, as well as internal support and motivation on the part of all Department employees.

Scope of Responsibility

The primary responsibility of the Ombudsman is to help the Department improve its effectiveness, efficiency and accountability, and to increase both external and internal support. Towards this goal, the Ombudsman is charged with authority to undertake independent, and in certain cases confidential, fact-finding in response to external or internal complaints or questions about the Department's performance. The Ombudsman shall facilitate resolution of complaints in coordination with Department staff and management, and shall make recommendations to the Director on matters that cannot be resolved through such coordination. The Ombudsman is responsible for ensuring that the fact-finding process is perceived and experienced as an independent, impartial, fair and credible process. All members of the Department's staff are responsible for cooperating with the Ombudsman towards this goal.

In addition to independently investigating internal and external complaints, the Ombudsman may assist Department managers in efforts to resolve problems or improve on programs, policies and regulations. The Ombudsman is expected to turn the results of his or her independent investigations into feedback for such efforts.

Limitations

The Ombudsman may address a broad range of issues, relating to any aspect of the Department's responsibilities and operations, including but not limited to permitting, enforcement, policy and program development, program management or structure, program costs and benefits, efficiency or fairness of programs and procedures, internal coordination, coordination with other state agencies or with local and federal government agencies, public access and participation, and customer service. The Department has other procedures and mechanisms in place that are intended to address such issues in the regular course of business, ranging from various advisory processes to compliance assistance, to provisions for public notice and comment, appeals, adjudication, mediation, etc. Independent fact-finding by the Ombudsman shall not be required where such opportunities already exist to raise questions or complaints, unless such opportunities have been exhausted and have failed to resolve significant questions about the Department's general performance. It shall be the responsibility of the Ombudsman to determine, consistent with this Policy, whether and to what extent complaints raise issues about the Department's performance in general, rather than an individual's disagreement with a particular decision, so as to warrant an independent investigation.

Under no circumstances shall the office of the Ombudsman serve as a forum for appeals from regulatory decisions made by the Department, or the Ombudsman's fact-finding supersede adjudication of the rights and interests of parties affected by such decisions. Similarly, the office of the Ombudsman shall not be a forum for appeals from management decisions affecting individual employees, and the Ombudsman's fact-finding shall not supersede such management decisions. In addition, the Ombudsman shall not be involved in matters where the union is the exclusive bargaining agent for employees, except to the extent the employee in question and the union request such involvement.

Independent investigations by the Ombudsman shall not affect the legal rights or responsibilities of parties (including the Department) to an internal or external dispute, whether related to regulatory or internal management decisions. The availability of the independent fact-finding process shall not limit the rights of any aggrieved party to pursue other avenues to challenge the Department's performance or decisions.

Independence

The Department recognizes that in certain cases the Ombudsman may reach findings or make recommendations that are “adverse” to the Department in the sense that the Ombudsman may find fault with regulations, policies, procedures or decisions made by management or other staff. This policy explicitly guarantees that such “adverse” findings or recommendations shall not be held against the Ombudsman, the person(s) who initially raised the complaint or question, or any witness or other person who cooperates with the Ombudsman, at his or her request, in the fact-finding process. Under no circumstances shall the Department take any disciplinary or otherwise adverse action against any person on account of such person’s participation in the fact-finding process.

Confidentiality

The Department recognizes that confidentiality may be critical in certain cases to allow complaints to be submitted and investigated. Upon request, the Ombudsman may enter into a confidentiality agreement with a complainant or a witness which protects from disclosure, to the extent permitted by law, (1) the complainant’s identity; (2) communications between the complainant and the Ombudsman, other than facts and factual statements; and/or (3) preliminary findings by the Ombudsman, except that the Ombudsman may share preliminary findings with Department managers (without disclosing the complainant’s identity) for purposes of coordinating a final resolution of a matter. The Department cannot guarantee that the confidentiality agreement will protect an individual from subpoenas or discovery requests in future litigation or other legal proceedings.

Procedure

The office of the Ombudsman will accept complaints in person (during regular business hours), in writing, by telephone, or via the Internet.

All complaints shall be evaluated expeditiously as to need for Ombudsman involvement. If the determination is made that a complaint should be handled by another office due to its nature or the availability of another resolution process, the complainant shall be referred to the appropriate office forthwith. If the determination is made that investigation by the Ombudsman is not

warranted, and the complainant is not referred to another office, the complainant shall be notified immediately of such determination, and of the reasons for it.

Prior to initiating an investigation, the Ombudsman shall discuss the need for confidentiality with the complainant and, if necessary, enter into a confidentiality agreement that defines the scope of the investigation and of the confidentiality to be provided mutually.

The Ombudsman may interview witnesses and/or schedule meetings with other parties, as the Ombudsman deems necessary. Prior to interviewing any witness or conducting such a meeting, the Ombudsman shall discuss the need for confidentiality with the witness or party attending the meeting and, if necessary, enter into a confidentiality agreement as described above.

Resolution, Recommendation to the Director

Before finalizing his or her findings, the Ombudsman shall discuss preliminary findings with the Complainant and with Department managers who may be affected by such findings, consistent with this Policy and with the terms of the confidentiality agreement(s), if any. The Ombudsman may also seek confidential advice from legal counsel or from senior staff in the Department who are not affected by the possible outcome(s) of the investigation. The Ombudsman shall not discuss preliminary findings with the Director.

The Ombudsman shall limit his or her findings to (1) factual findings and (2) if necessary, recommendations for final resolution. If the Ombudsman makes such recommendations to the Director, the recommendations and findings shall be dated, in writing, and addressed to the complainant and the Director, and shall be copied to affected Department managers, if any.

The Director's Decision

To the extent the findings of the Ombudsman document that a complaint has been resolved to the satisfaction of the complainant and the Department, those findings shall be deemed accepted by the Director.

To the extent the Ombudsman recommends a resolution to the Director, the Director shall act on the recommendation(s) within ten (10) business days by (a) adopting the recommendation; (b)

rejecting the recommendation; (c) asking appropriate staff for comment or advice and, within thirty (30) days following the issuance of the Ombudsman's findings, adopting or rejecting the recommendation(s); or (d), if the matter is subject to the Administrative Procedures Act, RIGL 42-35 *et seq.*, initiating rulemaking or other procedure necessary to comply with the provisions of that Act.

A rejection by the Director of the Ombudsman's recommendation(s) shall be dated and in writing, and shall state the Director's reasons for disagreeing with the findings or recommendation(s), which may include an explanation of overriding Department or state policy interest(s).

If the Director adopts the recommendation(s) of the Ombudsman, the Director shall take steps immediately to have the Department implement said recommendation(s) as quickly as is reasonably possible.

Public Record

Findings and recommendations made in writing by the Ombudsman shall be subject to public disclosure in accordance with applicable laws and regulations. The Ombudsman shall issue annually a report on the number and types of investigations conducted, the outcome in terms of whether matters have been resolved or otherwise closed, significant issues raised about the Department's performance, and the regulatory, policy or administrative measures taken or proposed to address such issues. The report shall not disclose complainants' or witnesses' identities. The report shall be available to the public.

Dated: _____

By: _____
Jan H. Reitsma, Director

Attachment "A"
Confidentiality Agreement

This matter involves a matter submitted for independent fact-finding to the Office of Ombudsman, State of Rhode Island, Department of Environmental Management regarding *(insert summary of matter)*. The undersigned parties agree to hold in confidence: 1) information regarding the identity of the complainant (or witness); 2) all communications between themselves regarding this matter and all information in whatever format obtained by the Ombudsman in the course of investigating this matter, other than facts and factual statements; and 3) preliminary findings by the Ombudsman. The Ombudsman may share preliminary findings with Department managers as necessary except that the Ombudsman shall not disclose the identity of the complainant to Department managers. The parties agree not to use, disseminate, or disclose directly or indirectly, any of the above-referenced confidential information to any person, firm or other business or government entity for any purpose whatsoever, except to the extent certain information may be subject to subpoena or discovery provisions in any legal proceeding involving this matter, or may be subject to public disclosure under the Access to Public Records Act, RIGL §38-2-1-15.